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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF RIVERSIDE – HISTORIC COURTHOUSE**

21 MARIA NUNEZ, individually, and on behalf of
22 all other similarly situated current and former
23 employees of DEFENDANTS,

24 Plaintiff,

25 vs.

26 RAINCROSS HOSPITALITY
27 CORPORATION, a California Corporation; and
28 DOES 1 through 50, inclusive,

Defendants.

Case No.: CVRI2102404

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

*[Assigned for All Purposes to the Hon.
Sunshine Sykes; Dept. 6]*

Complaint Filed: May 17, 2021
Trial Date: Not Yet Set

This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Agreement”) is made and entered into by and between Plaintiff MARIA NUNEZ (“Plaintiff” or

1 “Class Representative”), individually and on behalf of all putative class members, and Defendant
2 RAINCROSS HOSPITALITY CORPORATION (“Defendant”). Plaintiff and Defendant are
3 collectively referred to herein as “the Parties.”

4 **I. DEFINITIONS**

5 The following definitions are applicable to this Settlement, in addition to other terms defined
6 elsewhere in this Settlement:

7 1. “Superior Court” shall mean the Superior Court of California for the County of
8 Riverside.

9 2. The “Action” shall mean the operative Complaint of the civil action commenced on
10 May 17, 2021, filed and maintained by Plaintiff against Defendant in the Superior Court of
11 California, County of Riverside, Case No. CVRI2102404.

12 3. The “Class Period” shall mean the period of time from May 17, 2017, through March
13 11, 2022 (i.e., 45 days from the Parties’ mediation on January 25, 2022).

14 4. “Class” shall mean all persons who, during the Class Period, have previously been
15 or currently are employed in California by Defendant, as an hourly-paid, non-exempt employee.
16 “Class Member” shall mean an individual who is a member of the Class (or if any such person is
17 incompetent, deceased, or unavailable due to military service, the person’s legal representative or
18 successor in interest evidenced by reasonable verification).

19 5. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Farzad
20 Rastegar and Aja M. Taormina of Rastegar Law Group, APC.

21 6. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,
22 Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O’Hagan Meyer.

23 7. “Non-Participating Class Member” shall mean a Class Member who submits a
24 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
25 provided in the Class Notice.

26 8. “Participating Class Member” shall mean all Class Members who have not
27 submitted a complete, valid, and timely request to be excluded from the Settlement pursuant to the
28 instructions provided in the Class Notice.

1 9. “Preliminary Approval” shall mean the Superior Court’s preliminary approval of the
2 Settlement without material change that the Parties anticipate will be made following submission of
3 this Agreement to the Court.

4 10. “Settlement Administrator” shall mean Phoenix Settlement Administrators proposed
5 by the Parties and appointed by the Superior Court to administer the Settlement.

6 11. “Class Counsel Fees Payment” shall mean one-third of the Maximum Settlement
7 Amount (currently estimated to be One Hundred and Thirty-Three Thousand, Three Hundred and
8 Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33)) subject to approval by the Superior
9 Court as Class Counsel’s attorneys’ fees incurred in connection with the Action, including fees
10 incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this
11 Settlement, and all post-Settlement compliance procedures.

12 12. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
13 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
14 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
15 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class
16 Counsel’s expenses are not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

17 13. “Class Representative Payment” shall mean the special payment made to Plaintiff in
18 her capacity as Class Representative to compensate her for prosecuting the Action, and performing
19 work in support of the Action, in the amount of Six Thousand, Five Hundred Dollars and Zero
20 Cents (\$6,500.00), subject to approval by the Superior Court.

21 14. “Settlement Administrator Payment” shall mean the payment to the Settlement
22 Administrator for its fees and expenses in administering this Settlement.

23 15. “Workweek” shall mean any week in which a Class Member actually performed paid
24 work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

25 16. “Individual Workweeks” shall mean the number of Workweeks for an individual
26 Class Member.

27 17. “Settlement Share” shall mean the value of each Participating Class Member’s share
28 of the Net Settlement Amount as provided by this Agreement.

1 18. “Maximum Settlement Amount” shall mean the maximum settlement amount of
2 Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) payable by Defendant as provided
3 by this Agreement, unless that amount is increased pursuant to Paragraph 19 below, exclusive of the
4 normal employer’s share of any payroll taxes attributable to the Settlement Share payments
5 allocated to wages. Defendant’s payment of the normal employer’s share of payroll taxes will be
6 made separately and shall not come from the Maximum Settlement Amount.

7 19. Defendant represents that as of January 25, 2022, the number of workweeks in the
8 Class Period is approximately 15,168. If it is determined that the workweeks through the earlier of
9 Preliminary Approval or 45 days following mediation (i.e., March 11, 2022) exceeds 16,685
10 (15,168 plus 10% of 15,168), the Maximum Settlement Amount, exclusive of the escalator
11 provision found within this Paragraph 19, will be increased by the same number of percentage
12 points by which the actual number of workweeks exceeds 15,168. For example, if the actual number
13 of workweeks is determined to be 12% higher than 15,168, the Maximum Settlement Amount will
14 be increased by 12%; whereas if the actual number of workweeks is determined to be 9% (or less
15 than 16,686), the Maximum Settlement Amount will remain unchanged.

16 20. “Net Settlement Amount” shall mean the Maximum Settlement Amount, less (i) the
17 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
18 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
19 the Superior Court; (iv) the Settlement Administrator Payment approved by the Superior Court; and
20 (v) any other fees or expenses (other than Class Counsel Fees Payment and Class Counsel Litigation
21 Expenses Payment) incurred in implementing the terms and conditions of this Agreement as
22 approved by the Superior Court.

23 21. “Class Notice” shall mean the Notice of Proposed Settlement, Preliminary Approval
24 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
25 **Exhibit A**. The Class Notice shall further contain (i) a Class Member’s first and last name, (ii) last
26 known address, (iii) employee identification number, if applicable, (iv) the Class Member’s
27 Individual Workweeks, and (vi) the Class Member’s estimated Settlement Share. The Class Notice
28 shall also provide the Class Members with instructions on how to opt-out of and/or object to the

1 Settlement. The Class Notice shall be accompanied by a “Request for Exclusion” form, a sample of
2 which is attached hereto as **Exhibit B**. The information required to be provided by a Class Member
3 on the Request for Exclusion form shall not exceed the minimum information necessary to identify
4 the person as a Class Member and contact the person to clarify any uncertainties. The Class Notice
5 shall be accompanied by an “Objection” form, a sample of which is attached hereto as **Exhibit C**.
6 The information required to be provided by an objecting Class Member on the Objection form shall
7 not exceed the minimum information necessary to (i) identify the objector as a person entitled to
8 object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the
9 objector to clarify any uncertainties.

10 22. “Effective Date” shall mean the first business day following the last of the following
11 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
12 and/or timely motion to vacate the judgment, then the date the Court enters an order granting Final
13 Approval of the Settlement; (ii) if a Class Member both objects and either files a timely motion to
14 intervene or timely motion to vacate the judgment, then sixty-one (61) days following the date the
15 Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a Class Member
16 both objects and also files a timely motion to intervene or files a motion to vacate the Judgment and
17 also files a timely appeal, then the date of final resolution of that appeal (including any requests for
18 rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the
19 Settlement in its entirety, with no further challenge to the Settlement being possible. The
20 occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds
21 into the Settlement Account.

22 23. “Final Approval Hearing” shall mean the hearing to be conducted by the Superior
23 Court to determine whether to finally approve and implement the terms of this Settlement.

24 24. “Judgment” shall mean the Order of Final Judgment entered by the Superior Court
25 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
26 this Action.

27 25. “Employer’s Payroll Taxes” shall mean Defendant’s share of all payroll taxes
28 payable to any and all government agencies incurred for any payments of Settlement Shares to

1 Participating Class Members pursuant to this Settlement.

2 **II. RECITALS**

3 26. On May 17, 2021, Plaintiff commenced the Action against Defendant by filing a
4 Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of herself and all others
5 similarly situated alleged causes of action for: (1) Failure to Provide Meal Periods; (2) Failure to
6 Provide Rest Breaks; (3) Failure to Pay Minimum and Straight Time Wages; (4) Failure to Pay
7 Overtime Wages; (5) Failure to Timely Pay All Wages Due to Discharged or Terminated
8 Employees; (6) Failure to Provide Accurate Statements and Maintain Required Records; and (7)
9 Unfair Business Practices. Based on these allegations, Plaintiff alleged that she and all others
10 similarly situated were entitled to unpaid wages, liquidated damages, statutory penalties, attorneys’
11 fees, and costs of litigation, among other remedies.

12 27. Defendant denies and continues to deny all of Plaintiff’s material allegations.
13 Specifically, Defendant contends (1) it did not fail to pay the Class the minimum wage or overtime
14 compensation; (2) it provided the Class with all meal periods according to law; (3) it provided the
15 Class with all rest periods according to law; (4) it did not fail to timely pay the Class wages due and
16 owing during employment and/or upon separation; (5) it provided the Class with accurate itemized
17 wage statements, consistent with Labor Code Section 226; (6) it properly maintained all payroll
18 records; (7) it did not violate Business & Professions Code Section 17200, *et seq.*; and (8)
19 Defendant is not liable for damages, including unpaid wages, liquidated damages, statutory
20 penalties, attorneys’ fees, or costs of litigation to the Class.

21 28. In connection with the Action, and in order to work toward a mediated resolution
22 without the time and expense of formal discovery, the Parties produced voluminous documents and
23 data (including, by Defendant, human resources documents and policies, time records, and payroll
24 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

25 29. On January 25, 2022, the Parties in Action participated in a full day of mediation
26 before an experienced employment and class action mediator, Steve Rottman, Esq., which resulted
27 in a settlement of the Action (the “Mediation”).

28 30. The Settlement described in this Agreement represents a compromise and settlement

1 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
2 admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any
3 liability to Plaintiff, the Class, or as an admission by Plaintiff that Defendant's defenses in Action
4 have any merit. This Settlement is intended to fully, finally, and forever compromise, release,
5 resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this
6 Settlement.

7 31. Based on its own thorough, independent investigation and evaluation of this case,
8 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
9 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
10 best interest of the Class in light of all known facts and circumstances, including the risk of
11 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
12 Defendant including the risks of adverse determinations on the merits and numerous potential
13 appellate issues. Although Defendant contends that it has no liability in the Action, Defense
14 Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement
15 given the respective risks associated with the case.

16 32. Based on the foregoing Recitals, the Parties agree as follows:

17 **III. PROCEDURE FOR APPROVING SETTLEMENT**

18 33. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff
19 will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting
20 a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting
21 Preliminary Approval of the Settlement, and approving the Class Notice (attached as **Exhibit A** to
22 this Stipulation) ("Motion for Preliminary Approval"). Any unresolved disagreement among the
23 Parties concerning the Class Notice or other documents necessary to implement the Settlement will
24 be referred first to Steve Rottman, Esq., and if no resolution is reached, then to the Superior Court.

25 34. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that
26 they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an
27 order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for
28 the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary

1 Approval.

2 35. Should the Superior Court require any amendments to this Agreement or the Motion
3 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure
4 the Superior Court's Preliminary Approval.

5 36. Should the Superior Court decline to preliminarily approve any material aspects of
6 the Settlement, the Settlement will be null and void and the Parties will have no further obligations
7 under it. In such event, the Parties shall be returned to their respective positions as of the date and
8 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
9 respects as if this Agreement had not been executed.

10 37. **Class Notice.** After the Superior Court enters its order granting Preliminary
11 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
12 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
13 the Settlement and the Class Member's information as follows:

14 (a) Within twenty-one (21) days after the Motion for Preliminary Approval is
15 granted, Defendant will provide to the Settlement Administrator the "Class Members' Data," which
16 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii)
17 last known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the
18 Class Member's employee identification number, if applicable, based on Defendant's payroll
19 records, and (v) the Class Member's total number of Individual Workweeks. If any or all of the
20 Class Members' Data are unavailable to Defendant, Defendant will so inform Class Counsel prior to
21 the date on which Defendant are required to submit the Class Members' Data to the Settlement
22 Administrator and the Parties will make their best efforts to reconstruct or otherwise agree upon the
23 Class Members' Data prior to when it must be submitted to the Settlement Administrator. If the
24 Parties are unable to agree, the dispute will be resolved by the Settlement Administrator as provided
25 in Paragraph 40. This information will otherwise remain confidential and will not be disclosed to
26 anyone, except as required to applicable taxing authorities, as required to carry out the reasonable
27 efforts to identify Class Member information as described in this Paragraph 37(a), pursuant to
28 Defendant's express written authorization, or by order of the Superior Court.

1 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
2 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
3 identified Class Members via first-class U.S. Mail using the mailing address information provided
4 by Defendant, unless modified by any updated address information that the Settlement
5 Administrator obtains in the course of administration of the Settlement.

6 (c) If a Class Notice is returned by the U.S. Postal Service because of an
7 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
8 receipt of the returned packet, search for a more current address for the Class Member and re-mail
9 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
10 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
11 find a more current address. The Settlement Administrator will be responsible for taking reasonable
12 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
13 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
14 These reasonable steps shall include the tracking of all undelivered mail; performing address
15 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
16 Members for whom new addresses are found. Any such Class Members who failed to receive a
17 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
18 given an additional fourteen (14) days to opt out or object to the Settlement.

19 (d) The Settlement Administrator will inform Class Counsel and Defense
20 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
21 weekly status report.

22 (e) Not later than ten (10) court days prior to the Final Approval Hearing, the
23 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
24 compliance with its obligations under this Settlement. The declaration will be filed with the papers
25 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
26 Administrator will supplement its declaration of due diligence if any material changes occur from
27 the date of the filing of its prior declaration.

28 **38. Participating Class Members; Requests for Exclusion from Class Settlement;**

1 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
2 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

3 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
4 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
5 from the effect of the Settlement as provided below. All Participating Class Members shall be
6 bound by the provisions and releases contained in this Settlement.

7 (b) **Request for Exclusion from Settlement.** Class Members who wish to
8 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
9 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
10 first mails the Class Notices, a Request for Exclusion form, attached hereto as **Exhibit B** (“the
11 Exclusion Period”). Request for Exclusion forms may be submitted to the Settlement Administrator
12 via U.S. Mail only. Class Members must complete, sign, date, and timely return a Request for
13 Exclusion form to the Settlement Administrator to exclude themselves from the Settlement. A
14 Class Member who does not complete and submit a valid and timely Request for Exclusion form in
15 the manner and by the deadline specified above will remain a Participating Class Member and, if
16 the Court approves the Settlement, will be bound by all terms and conditions of the Settlement and
17 by the Judgment. A Class Member who timely submits a valid Request for Exclusion form will not
18 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
19 pursuant to the Settlement, and will not be bound by the terms of the Settlement, and will not have
20 any right to object, appeal, or comment thereon. To be valid, Request for Exclusion forms must be
21 completed in full, signed, and returned to the Settlement Administrator before the expiration of the
22 Exclusion Period. Non-Participating Class Members will not be permitted to file objections to the
23 Settlement and/or appear at the Final Approval Hearing to voice any objections to the Settlement.
24 The Settlement Administrator will provide Class Counsel, Defense Counsel, and the Superior Court
25 with only the names of the Non-Participating Class Members.

26 (c) **Objections to Settlement.** The Class Notice will provide that any Class
27 Member who does not request exclusion from the Settlement and who wishes to object to the
28 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the

1 Settlement Administrator initially mails the Class Notice, an Objection form, attached hereto as
2 **Exhibit C.** Objection forms may be submitted to the Settlement Administrator via U.S. Mail only.
3 Class Members must complete, sign, date, and timely return a Objection form to the Settlement
4 Administrator to object to the Settlement. The written objection must state the nature of and basis
5 for each objection in clear and concise terms. A Class Member who does not serve an Objection
6 form by the deadline specified may appear at the Final Approval Hearing to state their objection to
7 the Settlement. If a Class Member fails to submit an Objection form and/or to appear at the Final
8 Approval hearing to make an oral objection, the Class Member will be deemed to have waived all
9 objections and will be foreclosed from making any objections – whether by appeal or otherwise – to
10 the Settlement.

11 (d) If a Class Member submits both a Request for Exclusion form and an
12 Objection form, the Settlement Administrator shall attempt to contact and determine whether the
13 Class Member would like to withdraw either the Request for Exclusion form or the Objection form.
14 If the Class Member does not withdraw the Request for Exclusion form or if the Settlement
15 Administrator cannot contact a Class Member who submits both a Request for Exclusion form and
16 an Objection form, the Request for Exclusion form shall be deemed valid and it shall be presumed
17 that the Class Member does not wish to participate in the Settlement.

18 (e) If the Superior Court rejects the Class Member's objection, or if the Superior
19 Court approves the settlement despite any objections, the Class Member will be deemed to be a
20 Participating Class Member and will be bound by the terms of this Settlement.

21 (f) A Class Member who timely submits a valid Request for Exclusion form will
22 not participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
23 pursuant to the Settlement, and will not be bound by the terms of the Settlement and Judgment, and
24 will not have any right to object, appeal, or comment thereon.

25 39. **Report.** Not later than seven (7) days after the deadline for submission of requests
26 to be excluded and/or objections, the Settlement Administrator will provide Defendant, through
27 Defense Counsel, with a complete and accurate list of names for all Participating Class Members,
28 all Non-Participating Class Members, and all Class Members who objected to the settlement. The

1 report shall also be accompanied by an itemized calculation of the Settlement Shares for each
2 Participating Class Member. The Settlement Administrator shall also provide both Parties with a
3 report identifying the number of Participating Class Members, the number of Non-Participating
4 Class Members, and the number of Class Members who submitted a valid, timely, and complete
5 objection. Class Counsel shall also receive a list of Non-Participating Class Members and Class
6 Members who object to the Settlement.

7 40. **Resolution of Class Member Disputes.** If a Class Member disputes the number of
8 his or her Individual Workweeks stated in their Class Notice, the Class Member must, within forty-
9 five (45) days after the Settlement Administrator initially mails the Class Notice, ask the Settlement
10 Administrator to resolve the matter by returning the Class Notice with a statement of the number of
11 Workweeks that he or she contends were worked and include any documentation the Class Member
12 has to support their contention. The Settlement Administrator shall notify Defendant of the dispute
13 and provide them with a copy of the Class Notice and any documentation received in support of the
14 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
15 personnel records and verify the correct number of Workweeks within five (5) court days of the
16 Settlement Administrator's notification. Defendant's records will have a rebuttable presumption of
17 accuracy. After consultation with Class Counsel, Defense Counsel, and the applicable Class
18 Member, the Settlement Administrator will, within three (3) court days of Defendant's verification,
19 make a determination of the Class Member's number of Workweeks and that determination will be
20 final, binding on the Parties and the Class Member, and is not appealable.

21 41. **No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
22 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
23 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
24 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
25 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
26 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
27 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
28 (14) days after the Settlement Administrator issues its report identifying the number of Participating

1 Class Members, the number of Non-Participating Class Members, and the number of Class
2 Members who objected to the settlement as described in Paragraph 38(c). Notwithstanding any
3 other provisions in this Settlement, no sums, except the reasonable fees and expenses incurred by
4 the Settlement Administrator, shall be payable by Defendant in the event that this Settlement is
5 voided as provided for herein. If the Settlement is voided as provided for herein, Defendant will
6 pay the Settlement Administrator's reasonable fees and expenses incurred as of the date the
7 settlement is voided.

8 **42. Additional Briefing and Final Approval.**

9 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
10 Plaintiff will prepare and the Parties will jointly file with the Superior Court a Motion for Final
11 Approval of the Settlement, including payment of the Settlement Administrator's Payment, and a
12 memorandum in support of their motion ("Motion for Final Approval"). Not later than sixteen (16)
13 court days before the Final Approval Hearing, Plaintiff and Class Counsel will serve on Defendant
14 and file with the Superior Court a Motion for Awards of the Class Representative Payment, Class
15 Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment, pursuant to this
16 Settlement, and memoranda in support of its motion. Plaintiff will seek fees pursuant to *Laffitte v.*
17 *Robert Half Intern., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff will not seek additional fees from
18 Defendant or an increase in the Maximum Settlement Amount as part of the Motion for awards of
19 the Class Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation
20 Expenses Payment.

21 (b) Not later than five (5) court days before the Final Approval Hearing, the
22 Parties shall be entitled to file and serve a response to any Class Member's objection to the
23 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
24 opposition to said Motion is filed. Plaintiff and Class Counsel may file a reply in support of their
25 Motion for Awards of the Class Representative Payment, Class Counsel Fees Payment, and the
26 Class Counsel Litigation Expenses Payment, to the extent that any opposition to said Motion is
27 filed.

28 (c) If the Superior Court ultimately does not grant final approval of the

1 Settlement or grants final approval conditioned on any material change to the Settlement that is not
2 agreed to by one of the Parties, then either Party will have the right to void the Settlement. If the
3 Settlement is voided in this manner, the Parties will have no further obligations under the
4 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
5 been payable under this Settlement, except that the voiding Party will pay the Settlement
6 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
7 right to void the Settlement under this paragraph. For the purposes of this paragraph, a "material
8 change" is a change to the terms outlined in the accepted Memorandum of Understanding, a copy of
9 which is attached hereto as **Exhibit D**. However, an award by the Superior Court of a lesser
10 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the
11 Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not
12 constitute a material change to the Settlement within the meaning of this paragraph.

13 (d) Upon final approval of the Settlement by the Superior Court at or after the
14 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
15 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
16 bar all Participating Class Members from prosecuting against Defendant any claims or causes of
17 action of any kind up through the date of Final Approval, which were or could have been brought in
18 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
19 in Section V of this Agreement.

20 (e) After entry of the Judgment, the Superior Court will have continuing
21 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
22 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
23 may be appropriate under court rules or applicable law.

24 43. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
25 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their
26 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
27 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
28 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary

1 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
2 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
3 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
4 consummation of the Settlement (including making payments under the Settlement) will be
5 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
6 terms of this Settlement, becomes Final.

7 **44. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
8 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
9 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
10 Judgment such that there is a material modification to the Settlement, and that court's decision is
11 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
12 either Party will have the right to void the Settlement, which the Party must do by giving written
13 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
14 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
15 becomes final. For the purposes of this paragraph, a "material change" is a change to the terms
16 outlined in the accepted Memorandum of Understanding, a copy of which is attached hereto as
17 **Exhibit D.** A vacation, reversal, or modification of the Superior Court's award of the Class
18 Representative Payment, the Class Counsel Fees Payment, and/or Class Counsel Litigation
19 Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment
20 within the meaning of this paragraph.

21 **45. Establishment of Settlement Account.** The Settlement Administrator shall
22 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
23 when the Settlement Account has been established. The Settlement Administrator shall also
24 provide Defendant with an itemized statement for the total amount to be deposited into the
25 Settlement Account, which shall equal the Maximum Settlement Amount ("Settlement Account
26 Deposit"). Within ten (10) days after receiving notification of the Settlement Account and
27 statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an
28 amount equal to the Settlement Account Deposit. Except for the escalator provision outlined in

1 Paragraph 19, if applicable, Defendant shall have no obligation to pay any additional funds into the
2 Settlement Account.

3 **46. Payment of Settlement Shares.** The Settlement Administrator shall pay to each
4 Participating Class Member his or her Settlement Share from the Settlement Account. The
5 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
6 amount after withholdings to the Participating Class Member at the address indicated in the Class
7 Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
8 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

9 **47. Uncashed Settlement Share Checks.** Any checks paid to Participating Class
10 Members shall be negotiable for one hundred and eighty (180) calendar days from the date of their
11 issuance. A Participating Class Member must cash his or her Settlement Share check within one
12 hundred and eighty (180) calendar days after it is mailed to him or her. If a check remains uncashed
13 after one hundred and eighty (180) calendar days from the initial mailing, or if a check is returned to
14 the Settlement Administrator as undeliverable during the one hundred eighty-day period, the
15 Settlement Administrator shall take all reasonable efforts to identify the Participating Class
16 Member’s correct address, including the performance of a “skip-trace.” If an updated address can
17 be identified, the Settlement Administrator shall issue another check to the Participating Class
18 Member and mail it to the Participating Class Member at his or her updated address. If an updated
19 address for the Participating Class Member cannot be identified, if a reissued check is once again
20 returned to the Settlement Administrator as undeliverable, or if the reissued check remains uncashed
21 after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting
22 of such funds and shall give notice to the Parties of the total balance of uncashed Settlement Shares.
23 A Participating Class Member who fails to negotiate or receive their Settlement Share check despite
24 the procedures described above shall nevertheless remain bound by the Settlement and the releases
25 contained herein.

26 **48.** The funds represented by Settlement Share checks remaining uncashed for more than
27 one hundred and eighty (180) calendar days after issuance shall be voided and the total balance of
28 uncashed Settlement Shares shall be redistributed, *pro rata*, among Participating Class Members

1 who have cashed their checks.

2 49. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
3 days after final disbursement of all funds from the Settlement Account, the Settlement
4 Administrator will serve on the Parties and file with the Superior Court a declaration providing a
5 final summary report on the disbursements of all funds from the Settlement Account. Within ten
6 (10) days after transmission of any remaining unclaimed funds to Controller of the State of
7 California the Settlement Administrator will serve on the Parties and file with the Superior Court a
8 declaration providing a final summary report on the transmission of any remaining unclaimed funds
9 to Controller of the State of California as outlined Paragraph 48.

10 **IV. SETTLEMENT TERMS AND CONDITIONS**

11 50. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
12 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
13 conditional certification of the following Settlement Class: “all persons who, during the Class
14 Period, have previously been or currently are employed in California by Defendant as an hourly-
15 paid non-exempt employee.” The Parties agree that if for any reason the Settlement is not
16 preliminarily and/or finally approved, the conditional certification of the Settlement Class will be of
17 no force or effect, does not constitute an admission by Defendant that class certification is proper,
18 and will not be deemed admissible in this or any other proceeding, and that the Parties will litigate
19 the issue of class certification.

20 51. **Settlement Shares.** Subject to the terms and conditions of this Settlement, the
21 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
22 (10) days after Defendant provide the Settlement Administrator with the Class Members’ Data. The
23 Settlement Share for each Class Member will be calculated as follows, understanding that the
24 formulas below do not constitute an admission by either Party, and are intended only to provide a
25 practical means to simplify and administer the claims process:

26 (a) **Number of Class Members and Workweeks.** Defendant shall determine
27 the total number of Class Members and the aggregate number of Workweeks for those Class
28 Members as of the time of Preliminary Approval. This information shall be provided to the

1 Settlement Administrator along with the Class Members' Data as described in Paragraph 37(a)
2 above.

3 (b) **Calculation of the Workweek Value.** The Settlement Administrator shall
4 determine the value of a Workweek ("Workweek Value") by taking the Net Settlement Amount and
5 dividing it by the sum of all Class Members' Workweeks who do not opt out of the Settlement.

6 (c) **Calculation of Settlement Shares.** The Settlement Administrator shall
7 assign to each Participating Class Member a Settlement Share which shall be equal to the
8 Workweek Value multiplied by each Participating Class Member's Individual Workweeks. Upon
9 calculation of the Participating Class Members' Settlement Shares, the Settlement Administrator
10 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
11 identification numbers for the Class Members with their corresponding Individual Workweeks and
12 Settlement Shares.

13 52. **Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
14 Members' claims for unpaid wages and penalties. Accordingly, twenty percent (20%) of each
15 Settlement Share shall represent unpaid wages and the remaining eighty percent (80%) of each
16 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
17 representing unpaid wages shall be paid to each Participating Class Member subject to any
18 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
19 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the
20 Settlement Share representing penalties shall be paid to the Participating Class Member in full
21 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
22 to each Participating Class Member for that amount. Each Participating Class Member shall be
23 individually responsible for their own share of applicable income tax withholdings and deductions
24 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
25 will be issued. Defendant shall be responsible for payment of the Employer Payroll Tax attributable
26 to the Settlement Share payments constituting wages. The Employer's Payroll Tax shall not be
27 deducted from the Maximum Settlement Amount and shall not be included in any payments of
28 Settlement Shares. The Parties agree and understand that Defendant have not made any

1 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
2 Parties agree that Defendant and each Participating Class Member are solely responsible for
3 determining the tax consequences of payments made pursuant to this Settlement and for paying
4 taxes, if any, which are determined to be owed by each of them on such payments (including
5 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

6 **53. Total Payment Amount.** In no event, with the exception of the escalator provision
7 outlined in Paragraph 19, if applicable, will Defendant be required to pay more than the Maximum
8 Settlement Amount for distribution to the Plaintiff, Class Counsel, Participating Class Members,
9 Settlement Administrator, or for any other costs or expenses not otherwise enumerated. However,
10 Defendant shall be responsible for paying any Employer Payroll Taxes for the payment of
11 Settlement Shares attributable to wages, which shall not be paid from the Settlement Account and
12 shall not be included in the Maximum Settlement Amount.

13 **54. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
14 conditions of this Settlement, the Settlement Administrator will make the following payments out of
15 the Maximum Settlement Amount as follows:

16 **(a) To Plaintiff:** In addition to his Settlement Share, Plaintiff will apply to the
17 Superior Court for a Class Representative Payment in an amount not to exceed Six Thousand, Five
18 Dollars and Zero Cents (\$6,500.00). Defendant will not oppose this Class Representative Payment.
19 The Settlement Administrator will pay the Class Representative Payment approved by the Superior
20 Court out of the Maximum Settlement Amount. Payroll tax withholding and deductions will not be
21 taken from the Class Representative Payment and an IRS Form 1099 will be issued to Plaintiff for
22 this payment.

23 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
24 Class Counsel Fees Payment in an amount not to exceed One Hundred and Thirty-Three Thousand,
25 Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33), or one-third (1/3)
26 of the Maximum Settlement Amount, whichever is greater. Class Counsel will also submit to the
27 Superior Court a memorandum of costs for the Class Counsel Litigation Expenses Payment in an
28 amount not to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) as request reasonable costs of

1 suit to be paid from the Maximum Settlement Amount. Defendant will not oppose these requests.
2 The Settlement Administrator will pay the amounts approved by the Superior Court out of the
3 Maximum Settlement Amount. Withholding and deductions will not be taken from the Class
4 Counsel Fees Payment or Class Counsel Litigation Expenses Payment and one or more IRS Forms
5 1099 will be issued to Class Counsel with respect to those payments.

6 (c) **To the Settlement Administrator:** The Settlement Administrator will be
7 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
8 Superior Court, which are estimated not to exceed Seven Thousand, Five Hundred Dollars and Zero
9 Cents (\$7,500.00).

10 55. **Appointment of Settlement Administrator.** The Parties will ask the Superior
11 Court to appoint Phoenix Class Action Administrators, a qualified and experienced administrator
12 based in California where the Action is venued, to serve as the Settlement Administrator, which, as
13 a condition of appointment, will agree to be bound by this Agreement with respect to the
14 performance of its duties and its compensation. The Settlement Administrator's duties will include
15 (i) calculating Settlement Shares; (ii) preparing, printing, and mailing the Class Notice to all Class
16 Members; (iii) using reasonable measures to contact all Class Members, including conducting a
17 National Change of Address search on all Class Members before mailing the Class Notice to each
18 Class Member's address; (iv) re-mailing the Class Notice to the Class Member's new address for
19 those Class Members whose address had changed; (v) setting up a toll-free telephone number to
20 receive calls from Class Members; (vi) receiving requests for exclusion and objections to the
21 Settlement; (vii) providing the Parties with weekly status reports about the delivery of Class Notices
22 and any requests for exclusion and objections; (viii) issuing the checks to effectuate the payments
23 due under the Settlement; (ix) using reasonable measures to deliver issued checks to Participating
24 Class Members, including use of a "skip-trace" for undeliverable checks; and (x) otherwise
25 administering the Settlement pursuant to this Agreement including paying and reporting the
26 employer's share of the payroll taxes to the appropriate taxing agency. The Settlement
27 Administrator will have the final authority to resolve all disputes concerning the calculation of a
28 Participating Class Member's Settlement Share, subject to the terms set forth in this Agreement.

1 The Settlement Administrator's reasonable fees and expenses are estimated to not exceed Seven
2 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) and will be paid out of the Maximum
3 Settlement Amount, as set forth herein, subject to Court approval.

4 **V. RELEASE OF CLAIMS**

5 **56. Participating Class Members Released Claims.** As of the date of the Judgment,
6 each Participating Class Member, and without the need to manually sign a release document, shall
7 release the Released Parties from all causes of action and claims that were alleged in the Action or
8 reasonably could have been alleged based on the facts and legal theories contained in the Action,
9 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
10 and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide
11 compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide
12 complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or
13 resignation; (vii) unfair business practices that could have been premised on the claims, causes of
14 action or legal theories of relief described above or any of the claims, causes of action or legal
15 theories of relief pleaded in the operative complaint; (viii) any claim for costs and attorneys' fees
16 and expenses; and (iv) any claim arising from the claims described above under applicable federal,
17 state, local or territorial law as well as applicable regulations and Wage Orders (collectively, the
18 "Released Claims"). Participating Class Members who cash their checks are deemed to have
19 waived all Released Claims inclusive of claims under the Fair Labor Standards Act. Participating
20 Class Members who do not cash their checks shall be deemed to waive all Released Claims except
21 for a claim under the Fair Labor Standards Act. Released Claims for Class Members who worked
22 for Defendant in California during the Class Period shall have their claims released during the Class
23 Period.

24 **57.** Released Parties includes Defendant and its past, present and/or future, direct and/or
25 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
26 including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders,
27 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
28 assigns, and joint venturers, including Raincross Hospitality Management Corporation.

1 58. The Released Claims described in Paragraphs 56 expressly exclude all claims made
2 by a Participating Class Member for vested benefits, wrongful termination, unemployment
3 insurance, disability, social security, workers’ compensation, claims while classified as exempt, and
4 claims outside of the Class Period.

5 59. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
6 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
7 to costs and attorneys’ fees and expenses against Defendant or the Releasees arising from or related
8 to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
9 Procedure, the Fair Labor and Standards Act, the Business and Professions Code, or any other
10 contract, statute or law (“Class Counsel Released Claims”).

11 60. **No Effect on Other Benefits.** The payment of Settlement Shares will not result in
12 any additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have
13 any effect on the eligibility for, or calculation of, any employee benefit.

14 **VI. DUTIES OF THE PARTIES**

15 61. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
16 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
17 limited to, execution of such other documents and the taking of such other actions as may
18 reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement
19 with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this
20 Stipulation and any other efforts that may become necessary by court order or otherwise, to
21 effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of
22 this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take
23 all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will
24 work together to make any non-material modifications of the Settlement requested by the Court to
25 obtain approval of the Parties’ Settlement.

26 62. **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
27 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
28 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral

1 attack.

2 **63. Duties Prior to Court Approval.** Class Counsel shall promptly submit this
3 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
4 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
5 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
6 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
7 the Class Members, approving as to form and content the proposed Class Notice attached hereto as
8 **Exhibit A**, respectively, and directing the mailing of the Class Notice to Settlement Class Members.

9 **64. Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant
10 denies any liability of any kind associated with the claims alleged in the Lawsuit, and denies any
11 liability or intentional wrongdoing, Defendant revised and updated its bonus and service charge
12 practices and meal and rest period policies and practices in response to this Action.

13 **VII. MISCELLANEOUS TERMS**

14 **65. No Admission of Liability.** Defendant denies that it has engaged in any unlawful
15 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
16 claims asserted in the Action. This Settlement is entered into solely for the purpose of
17 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
18 as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of her
19 claims were non-meritorious, or any defense asserted by Defendant was meritorious. This
20 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
21 bearing on, and will not be admissible in connection with, any litigation (other than solely in
22 connection with the Settlement).

23 **66.** The Parties also agree that this release constitutes a resolution of a good faith dispute
24 concerning wages and complies with Labor Code Section 206.5, which reads in part:

25
26
27
28

“Execution of release of claim or right on account of wages due.
No employer shall require the execution of any release of any
claim or right on account of wages due, or to become due, or made,

1 or made as an advance on wages to be earned, unless payment of
2 those wages has been made.”

3
4 67. Whether or not the Judgment becomes Final, neither the Settlement, any document,
5 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
6 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
7 evidence for any purpose adverse to Defendant or any other beneficiary of the releases granted
8 under this Settlement (the “Released Parties”), including, but not limited to, evidence of a
9 presumption, concession, indication or admission by any of the Released Parties of any liability,
10 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
11 evidence against any of the Released Parties, or any other civil, criminal or administrative action or
12 proceeding except for purposes of effectuating this Settlement.

13 68. Notwithstanding Paragraph 67 of this Settlement, any and all provisions of this
14 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
15 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

16 69. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
17 malicious, disparaging or defamatory statements, allegations, comments or communications,
18 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp,
19 or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to
20 encourage, authorize, or permit any such statements, allegations, comments or communications to
21 be made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any
22 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
23 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
24 such request to Defense Counsel within 30 days of the execution of this Agreement.

25 70. **Waiver of Reemployment.** Plaintiff acknowledges that she has no intent to re-apply
26 for employment with Defendant. Plaintiff further acknowledges that Defendant or any related,
27 successor, parent, or subsidiary companies, including Raincross Hospitality Management
28 Corporation, has the right to refuse rehire Plaintiff for non-discriminatory and non-retaliatory

1 reasons and Plaintiff acknowledges that Defendant's position is that such legitimate non-
2 discriminatory and non-retaliatory reasons exist.

3 71. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
4 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
5 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
6 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
7 other than the representations, warranties, covenants, and inducements expressly stated in this
8 Settlement and its exhibits.

9 72. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
10 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
11 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
12 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
13 and their counsel will cooperate with each other and use their best efforts to affect the
14 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
15 form or content of any document needed to implement the Settlement, or on any supplemental
16 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
17 seek the assistance of mediator Steve Rottman, Esq., and if no resolution is reached the Superior
18 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
19 be consistent with this Settlement.

20 73. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
21 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
22 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

23 74. **Settlement Binding on Successors.** This Settlement Agreement will be binding
24 upon, and inure to the benefit of, the successors of each of the Parties.

25 75. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
26 governed by and interpreted according to the laws of the State of California, without giving effect to
27 any conflict of law principles or choice of law principles.

28 76. **Cooperation in Drafting.** The Parties have cooperated in the drafting and

1 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
2 that the Party was the drafter or participated in the drafting.

3 77. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
4 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
5 this Settlement through arms-length negotiations, taking into account all relevant factors, current
6 and potential.

7 78. **Headings.** The descriptive heading of any section or paragraph of this Settlement is
8 inserted for convenience of reference only and does not constitute a part of this Settlement.

9 79. **Notice.** All notices, demands or other communications given under this Settlement
10 will be in writing and deemed to have been duly given as of the third business day after mailing by
11 U.S. Mail, addressed as follows:

12 *To Class Counsel:* Farzad Rastegar, Esq.
13 Aja M. Taormina, Esq.
14 RASTEGAR LAW GROUP, APC
15 22760 Hawthorne Boulevard, Suite 200
16 Torrance, California 90505

17 *To Defense Counsel:* Matthew C. Sgnilek, Esq.
18 Andrea Rosenkranz, Esq.
19 O’HAGAN MEYER
20 4695 MacArthur Court, Suite 210
21 Newport Beach, CA 92660

22 80. **Enforcement.** The Parties agree that this Settlement shall be enforceable by the
23 Court and the Court shall retain exclusive and continuing jurisdiction of this Action over all Parties
24 and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement.
25 Plaintiff, Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of
26 the Court for purposes of interpreting, implementing, and enforcing the Settlement and all orders
27 and judgments entered in connection therewith. The prevailing party in any action or proceeding to
28 enforce this Settlement shall be awarded his or her reasonable attorney’s fees and costs.

81. **Execution in Counterpart.** This Settlement may be executed in one or more
counterparts. All executed counterparts and each of them will be deemed to be one and the same
instrument provided that counsel for the Parties will exchange between themselves original signed

1 counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be
2 presumptive evidence of execution of the original, which shall be produced on reasonable request.
3 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.
4

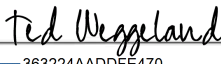
5 DATED: May 10, 2022

MARIA NUNEZ

7 
8 _____

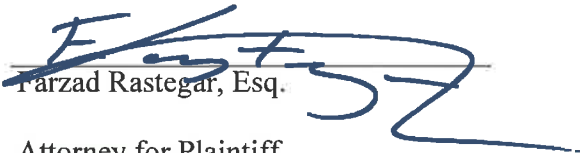
9 DATED: 5/23/2022

RAINCROSS HOSPITALITY CORPORATION

11 DocuSigned by:
By: 
12 _____
13 Its: 363224AADD4FE470...
President/CEO

14 DATED: 5/18/22

RASTEGAR LAW GROUP, APC

17 By: 
18 Farzad Rastegar, Esq.
19 Attorney for Plaintiff
MARIA NUNEZ

20 DATED: 5/18/2022

O'HAGAN MEYER

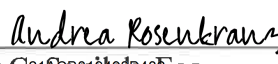
22 DocuSigned by:
By: 
23 _____
24 Matthew C. O'Gallagher, Esq.
Andrea Rosenkranz, Esq.
25 Attorneys for Defendant
RAINCROSS HOSPITALITY CORPORATION

Exhibit “A”

Maria Nunez v. Raincross Hospitality Corporation
Riverside County Superior Court Case No. CVRI2102404

|||||
<<PSA ID>>
<<First Last>>
<<Address>>
<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly employee of Raincross Hospitality Corporation at any time between May 17, 2017, and March 11, 2022, you may be able entitled to receive money from a Class Action Settlement.

A court approved this notice. This is not a solicitation from a lawyer. You are not being sued.

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion form, you will not receive a settlement payment.
OBJECT	If you wish to object to the Settlement, you may submit an Objection form and supporting papers to the Settlement Administrator. Any completed Objection forms will be provided to the Court. You may also offer your oral comments at the Final Approval Hearing. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Maria Nunez v. Raincross Hospitality Corporation* Riverside County Superior Court Case No. CVRI2102404 (the "Action" or "Lawsuit"). The Defendant in the Action is Raincross Hospitality Corporation (referred in this Notice as "Defendant.")

The Court has granted preliminary approval of a "Settlement Class" defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Raincross

Hospitality Corporation at any time between May 17, 2017, and March 11, 2022.

Defendant's employment records indicate that you meet this definition, which makes you a member of the Settlement Class (referred to in this Notice as a "Class Member"). The Court directed that this Notice be sent to all Class Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Member who have not opted out of the Settlement.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On May 17, 2021, Plaintiff Maria Nunez filed the operative class action complaint against the Defendant alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of herself and on behalf of all current and former non-exempt, hourly employees. By Plaintiff's Complaint, Plaintiff alleges that the Defendant: (1) failed to pay at least the minimum wage for all hours worked; (2) failed to pay straight time overtime wages; (3) failed to provide compliant meal periods; (4) failed to provide compliant rest periods; (5) failed to provide accurate wage statements and maintain required payroll records; (6) failed to timely pay wages during employment; (7) failed to timely pay wages at separation; and (8) violated California's Unfair Competition Law. Defendant vigorously denies all the claims and contentions made in the Lawsuit and maintains it has fully complied with the law. However, Defendant has agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendant. The Class Representative and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the Final Approval Hearing.

4. What are the terms of the Settlement?

Defendant will pay Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) to settle the Action (the "Maximum Settlement Amount"). The Maximum Settlement Amount includes: (a) all Settlement Payments to Participating Class Members; (b) the Service Award to the Class Representative; (c) the Class Counsel's attorneys' fees and costs; and (d) the reasonable fees and costs of the Settlement Administrator. Defendant will pay its portion of all payroll taxes resulting from the Settlement in addition to the Maximum Settlement Amount.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount. Class Counsel will request that the Court award Class Counsel up to one-third (1/3) of the Maximum Settlement Amount or up to One Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33) in attorneys' fees and up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in out-of-pocket litigation costs, up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for Settlement Administration Costs for the third-party Settlement Administrator, and up to Six Thousand, Five Hundred Dollars and Zero Cents (\$6,500.00) for the Service Award for the Class Representative in recognition of her time and

service to the Class in pursuing the Action and in fulfilling her obligations as the Class Representative. The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the “Net Settlement Amount”—will be distributed to those Class Members who have not opted out of the Settlement (the “Participating Class Members”). No portion of the Maximum Settlement Amount will be returned to Defendant.

You can obtain a copy of the full Settlement on file with the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501. The Settlement is attached as “Exhibit 1” to the Declaration of Farzad Rastegar, Esq. filed in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Release of Claims. The case file can also be viewed online via the Court’s website at riverside.courts.ca.gov.

5. How much can I expect to receive?

Each Participating Class Member will receive a proportional share of the Net Settlement Amount based on the number of workweeks the person worked for Defendant as a non-exempt, hourly employee during the Class Period, defined as the period of time from May 17, 2017, and March 11, 2022. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member’s Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the “Workweek Value.” Each Participating Class Member’s Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member’s total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: (a) 20% as wages that will be subject to deductions and withholdings for the employee’s share of state and federal payroll taxes; and (b) 80% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to \$600.00. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee’s required withholdings and payroll taxes from the “wage” portion of the Settlement payment. Defendant will separately pay the employer’s share of payroll taxes with respect to the “wage” portion of each Settlement payment.

Please note that each Participating Class Members will be responsible for his/her share of taxes attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

6. What if I disagree with the number of workweeks credited to me in this Notice?

The information concerning the number of workweeks you worked as an hourly, non-exempt employee during the Class Period is based on Defendant’s records. To dispute this number of workweeks credited to you, you must send written notice to the Settlement Administrator. To be valid, your written dispute of weeks worked must:

(1) include your full name, address, telephone number, and last four digits of the Social Security number; and (2) be accompanied by satisfactory evidence of the actual weeks worked as an hourly, non-exempt employee for Defendant during the Class Period, including any supporting documentation (e.g., copies of your pay stubs). To be timely, your written dispute of workweeks worked must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator *at the address provided below*, and be postmarked on or before , 2022.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member. The Settlement Administrator will make the final decision as to how many workweeks should be credited to the Class Member and report the outcome to the Class Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq.* in the names of those Participating Class Members who did not cash their checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (800) 523-5773, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Released Parties from the Released Claims for the Class Period, which is defined as the period of time between May 17, 2017, and March 11, 2022.

The Released Claims are defined as all causes of action and claims that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) claims for unpaid minimum wages (Lab. Code §§ 1194, 1197, 1197.1); (ii) claims for unpaid overtime (Lab. Code §§ 510, 1198); (iii) claims for non-compliant meal periods and/or associated premiums (Lab. Code §§ 226.7, 512(a)); (iv) claims for non-compliant rest periods and/or associated premiums (Lab. Code § 226.7); (v) claims for wage statement violations (Lab. Code § 226(a)); (vi) claims for payroll records violations (Cal. Lab. Code §§ 1174, 1174.5); (vii)

claims for failure to timely pay wages during employment (Cal. Lab. Code §§ 204, 210); (viii) claims for failure to timely pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code §§ 201-203); (ix) claims for violations of California Business & Professions Code, §§ 17200, *et seq.* arising out of the aforementioned claims; and (x) claims for attorneys' fees, costs and expenses for all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Complaint. The Participating Class Members who cash their Settlement checks further acknowledge that they are releasing any claims they have against Defendant under the Fair Labor Standards Act ("FLSA") (collectively, the "Released Claims"). Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period are not encompassed within the definition of "Released Claims."

The Released Parties include Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, including Raincross Hospitality Management Corporation

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment.** If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement by completing and returning the enclosed Request for Exclusion form to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion must include: (1) your full name, address, and last four digits of the Social Security number; (2) a clear statement that you wish to opt out of, or be excluded from, the Settlement in *Nunez v. Raincross Hospitality Corporation*, Riverside County Superior Court Case No. CVRI2102404; (3) a clear statement that you understand that by opting out, you will not receive any monies from the settlement; and (4) your signature. To be timely, the Request for Exclusion form must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator at the address provided below and be postmarked on or before _____, 2022.

c. **Object to the Settlement.** If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. If the Court rejects your objection and finally approves the Settlement, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object, you may complete and return the enclosed Objection form, or you may simply appear at the Final Approval Hearing set for _____, 2022 at _____ a.m. in the Riverside County Superior Court and discuss your objection with the Court and the Parties at your own expense. Written objections must include: (i) your full name, current address, and last four digits of the Social Security number; (ii) the approximate dates of your employment at Defendant; (iii) the case name and number (*Nunez v. Raincross Hospitality Corporation*, Riverside County Superior Court Case No. CVRI2102404); (iv) a written statement of all grounds for the

objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents on which the objection is based, if any; and (v) your signature. To be timely, a written objection must be mailed by first-class U.S. Mail to the Settlement Administrator at the address provided below and be postmarked on or before [REDACTED], 2022.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion form.

10. Who are the attorneys representing the Plaintiff and the Settlement Class?

The Court has appointed the following lawyers as “Class Counsel” to represent all Class Members:

Farzad Rastegar, Esq.
RASTEGAR LAW GROUP, APC
22760 Hawthorne Boulevard, Suite 200
Torrance, CA 90505
Telephone: (310) 961-9600

You will not be charged for these lawyers.

11. How will the attorneys for the Settlement Class be paid?

All payments for Class Counsel’s attorneys’ fees and costs will be made from the Maximum Settlement Amount. Class Counsel intends to request an award of attorneys’ fees up to one-third (1/3) of the Maximum Settlement Amount, or up to One Hundred and Thirty-Three Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33), plus reimbursement of reasonable, actual out-of-pocket costs incurred in the litigation, up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00). Class Counsel has been prosecuting this Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs. The Court will decide the amount of fees and expenses to award at the Final Approval Hearing.

12. When and where will the Court decide to approve the Settlement?

The Court has preliminarily approved the settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give final approval to the Settlement. The Court will hold the Final Approval Hearing on [REDACTED], 2022, at [REDACTED] a.m., in Department 6 of the Riverside County Superior Court located at 4050 Main Street, Riverside, CA 92501, before the Honorable Sunshine Sykes. At the Final Approval Hearing, the Court will rule on Class Counsel’s request for attorneys’ fees and litigation costs, the Class Representative Service Award, and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

13. Will I be subject to discipline if I participate in the Settlement?

No. Defendant approves of the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not

affect your employment with Defendant or Defendant's treatment of you as a former employee.

14. What is the Settlement Administrator's address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended for the Settlement Administrator must be mailed to the Settlement Administrator at the following address:

Nunez v. Raincross Hospitality Corporation
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 9286
(800) 523-5773

15. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at (800) 523-5773 and/or Class Counsel at (310) 961-9600.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.

Exhibit “B”

Maria Nunez v. Raincross Hospitality Corporation
Riverside County Superior Court Case No. CVRI2102404



<<PSA ID>>
<<First Last>>
<<Address>>
<<City, State, Zip, Country>>
Last 4 digits of SSN

Name/Address Changes (if any):

EXCLUSION REQUEST FORM

You are receiving this form because you may be entitled to receive money from a Class Action Settlement.

Use and return this form only if you wish to be excluded from the Class and do not wish to receive a settlement payment. If you exclude yourself from the Class by signing and returning this form, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have.

If you wish to remain in the Class and receive a settlement payment, you may disregard this form. You do not need to do anything, and you will receive a check by U.S. Mail.

To be valid, your Exclusion Request Form must (a) include your full name, address, and last four digits of your Social Security number, (b) be signed by you, and (c) be returned to the Settlement Administrator at the address provided below and be postmarked on or before , 2022.

I HEREBY CONFIRM THAT I HAVE RECEIVED NOTICE OF THE PROPOSED SETTLEMENT IN THE *NUNEZ V. RAINCROSS HOSPITALITY CORPORATION* ACTION AND WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS. I UNDERSTAND THAT I WILL NOT RECEIVE A SETTLEMENT PAYMENT OR OTHER SETTLEMENT BENEFITS AND WILL NOT BE BOUND BY THE SETTLEMENT, INCLUDING THE RELEASE OF CLAIMS.

Dated: _____ **Signature:** _____

What is the Settlement Administrator’s address?

*Nunez v. Raincross Hospitality Corporation
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
(800) 523-5773*

Exhibit “C”

Maria Nunez v. Raincross Hospitality Corporation
Riverside County Superior Court Case No. CVRI2102404

|||||

<<PSA ID>>
<<First Last>>
<<Address>>
<<City, State, Zip, Country>>
Last 4 digits of SSN

Name/Address Changes (if any):

OBJECTION FORM

You are receiving this form because you may be entitled to receive money from a Class Action Settlement.

Use and return this form only if you wish to object to the settlement. If your objection is rejected by the Court, you will receive your Individual Settlement Payment, you will be subject to the terms of the Settlement, and you will release whatever rights you may currently have.

To be valid, your Objection Form must (a) include your full name, address, and last four digits of your Social Security number, (b) include the nature and basis for your objection, (c) be signed by you, and (d) be returned to the Settlement Administrator at the address provided below and be postmarked on or before , 2022.

I object to the settlement in *Nunez v. Raincross Hospitality Corporation* because _____

Dated: _____ **Signature:** _____

What is the Settlement Administrator's address?

Nunez v. Raincross Hospitality Corporation
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
(800) 523-5773

Exhibit “D”

RAINCROSS HOSPITALITY CORPORATION CLASS ACTION
MEMORANDUM OF UNDERSTANDING

Defendant Raincross Hospitality Corporation (“Defendant”) and Plaintiff Maria Nunez (“Plaintiff”) hereby set forth the terms of a Memorandum of Understanding (“MOU”) designed to bind the Parties to the terms of a class action settlement. Defendant and Plaintiff are referred to in this Agreement individually as a “Party” and collectively as the “Parties.” The Parties hereby agree as follows:

1. This MOU confirms the essential terms of the settlement and will assist the Parties in preparing a comprehensive “long form” settlement agreement. This MOU is admissible and enforceable by, binding on, and subject to disclosure by all Parties.

2. The term “Action” means the action entitled *Maria Nunez v. Raincross Hospitality Corporation*, Riverside County Superior Court Case No. CVRI2102404.

3. The term “Defendant” means the Defendant named by Plaintiff in her Complaint in the Action, and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, including Raincross Hospitality Management Corporation.

4. The term “Settlement Class Members” means all current and former non-exempt employees who worked for Defendant in California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification). The term “Settlement Class Members” shall not include any person who submits a timely and valid request for exclusion.

5. The Class Period shall be defined as the time from May 17, 2017, through the date of granting of preliminary approval or 45 days following mediation (i.e., March 11, 2022), whichever is earlier.

6. The Parties and their counsel agree that the consideration described in the subparagraphs below constitutes their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendant consists of the following:

(a) Defendant shall pay a maximum amount (“Maximum Settlement Amount”) of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) (unless increased pursuant to Paragraph 6(g) below) in full and complete settlement of this matter, which sum includes all payments to Settlement Class Members, Class Counsel’s attorneys’ fees and litigation costs, third-party administration costs, and the enhancement award to Plaintiff.

(b) Defendant will not oppose a request by Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$6,500.00, to be deducted from the Maximum Settlement Amount, in exchange for her service as a Class Representative and a General Release of all claims against Defendant. This enhancement payment is in addition to the payment to which Plaintiff is entitled to as a Settlement Class Member.

(c) Defendant will not oppose an application for an award to Class Counsel, from the Maximum Settlement Amount, of up to One third (33.333%) of the Maximum Settlement Amount, or \$133,333.33, in attorneys' fees, plus reasonable costs and expenses not to exceed \$15,000.00.

(d) In addition to the Maximum Settlement Amount, Defendant shall pay the employer's portion of any payroll taxes on portions of the settlement allocated to unpaid wages.

(e) The balance after deduction of Class Counsel's attorneys' fees and litigation costs, third-party administration costs, and the enhancement award to Plaintiff will be the "Net Settlement Amount."

(f) The Net Settlement Amount shall be distributed on a *pro rata* basis to Settlement Class Members, subject to the distribution formula agreed upon by the Parties.

(g) Defendant represents that as of January 25, 2022, the number of workweeks in the Class Period is approximately 15,168. If it is determined that the workweeks through the earlier of Preliminary Approval or 45 days following mediation (i.e., March 11, 2022) exceeds 16,685 (15,168 plus 10% of 15,168), the Maximum Settlement Amount, exclusive of the escalator provision found within this Section 8(g), will be increased by the same number of percentage points by which the actual number of workweeks exceeds 15,168. For example, if the actual number of workweeks is determined to be 12% higher than 15,168, the Maximum Settlement Amount will be increased by 12%, if the actual number of workweeks is determined to be 9% (or less than 16,686), the Maximum Settlement Amount will remain unchanged.

(h) All funds represented by uncashed checks remaining in the Net Settlement Amount shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their

Settlement Checks. Therefore, Defendant will not be required to pay any interest on such amounts.

7. The Parties agree to selection of Phoenix Class Administration Solutions on the basis of cost and competence, with the best interests of the Settlement Class Members in mind. Fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount.

8. The settlement payment for each individual Settlement Class Member shall be allocated as follows: (a) 20% as wages; and (b) 80% as penalties and interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest. The recipients of payments pursuant to this Agreement shall be exclusively responsible for all tax obligations other than the employers’ share of payroll taxes allocated to unpaid wages.

9. The Parties agree that Defendant’s payment of the consideration described in Paragraph 6, above, is entirely dependent upon the Court’s approval of the Parties’ settlement of the Action.

10. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and releases described immediately below.

a. *Release by Plaintiff:* Plaintiff shall release all claims related to her employment, including all claims alleged in the Action, and be bound by a Civil Code Section 1542 release and waiver of all claims known and unknown, without exception, except as may be prohibited by law. This specifically excludes claims for unemployment insurance, disability, social security, and workers’ compensation (except for claims pursuant to Labor Code Sections 132a and 4553).

b. *Release by Settlement Class Members:* All Settlement Class Members who do not timely opt out of the Settlement will release all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint, including all of the following claims for relief: (i) failure to pay and timely pay all regular wages, minimum wages, and overtime wages due; (ii) failure to provide compliant meal periods; (iii) failure to provide compliant rest breaks; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; and (vii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint. The Settlement Class members who cash their Settlement Checks further acknowledge they

are releasing any claims they have against Defendant under the Fair Labor Standards Act (“FLSA”) (collectively, the “Released Claims”).

c. The definition of “Released Claims” for the Settlement Class Members shall expressly exclude all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period.

11. The Class Notice will contain an estimated individual settlement payment, individual number of workweeks, how to opt-out of the settlement, and how to object to the settlement. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.

12. Defendant maintains its right, in its sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that ten percent (10%) or more of Settlement Class Members opt out of the settlement.

13. The Parties and their counsel agree not to take any action to encourage any Settlement Class Members to opt out of and/or object to the Settlement.

14. Parties and attorneys will keep the settlement confidential through preliminary approval. Thereafter, the Parties will agree to make no comments to the media or otherwise publicize the terms of the settlement.

15. While the Parties intend this MOU to be a precursor to a long form agreement, should that not occur, the Parties agree that this MOU constitutes a written settlement within the provisions of Code of Civil Procedure § 664.6, agree that this MOU shall be admissible pursuant to Evidence Code §§ 1122(a)(1) and 1123(b), and agree and intend that the Riverside County Superior Court may enforce this MOU pursuant to Code of Civil Procedure § 664.6.

16. In any action or proceedings to enforcement the terms and conditions of this Agreement, the prevailing party shall be entitled to its attorney fees and costs.


17. Defendant expressly denies any liability. Neither this MOU nor the “long form” Stipulation of Settlement shall constitute an admission of liability or of the accuracy of any allegation made by Plaintiff or her counsel.

///

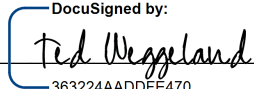
///

ACCEPTED AND AGREED:

Plaintiff Maria Nunez:

Signature: 
Date: Jan 26, 2022


Defendant Raincross Hospitality Corporation:

Signature: 
Name: Ted weggeLand
Date: 1/28/2022

APPROVED AS TO FORM:

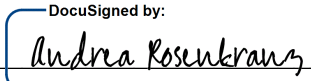
Attorneys for Plaintiff and the Putative Classes:

RASTEGAR LAW GROUP, APC

Signature: 
Name: Farzad Rastegar
Date: January 26, 2022

Attorneys for Defendant Raincross Hospitality Corporation:

O'HAGAN MEYER

Signature: 
Name: Andrea Rosenkranz
Date: 1/27/2022